

Claimant alleges accidental injury on December 25, 2002, when she slipped in respondent's parking lot while retrieving certain items she was going to use for the respondent's residents' bingo game. Claimant alleges she advised respondent's maintenance supervisor, Rick Qualls, of the injury and requested that he put ice treatment on the slick parking lot. Mr. Qualls, who testified at the preliminary hearing, denied being

advised by claimant of any injury or any need for treatment of the parking lot. He also alleged that there was no need, as the parking lot was not slick on that date.

Claimant also testified that she spoke to other respondent employees, including the executive director, Rebecca Murray, and the business office manager, Jessica Linton [sic], about the injury. Claimant testified she contacted Ms. Murray by telephone, as Ms. Murray was on vacation at the time. However, both Ms. Murray and Ms. Linton [sic] deny that they were advised by claimant of any knee injury while claimant was employed with respondent. Claimant testified that she attempted to fill out an incident report, but was unable to locate the report. All three of respondent's witnesses testified that the incident reports were contained at the nurses' station and had been there the entire time claimant was employed with respondent.

Claimant attempted to obtain medical treatment, but was unable to schedule an appointment with Dr. Mills, the physician she testified she was advised by Ms. Murray to contact. After several attempts, claimant contacted the Workers Compensation Division ombudsman's office and talked to an ombudsman named Kathy Jones. Claimant was provided a workers' compensation form, which she testified she filled out and forwarded to respondent by certified mail. A certified mail receipt was attached to the preliminary hearing as Claimant's Exhibit 1, showing a receipt by Jessica Henton [sic] on February 5, 2003. Claimant's last day worked with respondent was January 13, 2003, when after a meeting with Ms. Murray, it was determined that claimant should terminate her employment due to numerous attendance problems.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹

The Board acknowledges numerous conflicts in this record. Claimant's testimony on several occasions directly conflicts with the testimonies provided by respondent's employees. Claimant does not clearly explain her inability to obtain an incident report when all three of respondent's employees testified the incident reports were readily available and located in the same location for the entire time claimant was employed with respondent. Claimant was also unable to explain her conflicting testimony about whether her injury involved a slip or a slip and fall.

After leaving respondent's employment, claimant applied for work with a company similar to respondent's, called The Vine. When filling out the employee health screening questionnaire for The Vine on January 21, 2003, claimant described an injury to her knee in the parking lot of another business on December 25, 2002. Additionally, the receipt by respondent of a certified letter on February 5, 2003, which claimant testified included the

¹ See K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

workers' compensation form requesting workers' compensation benefits provided by the ombudsman, supports claimant's allegation of an ongoing attempt to obtain medical treatment for the injured knee. Respondent's representatives, while acknowledging receipt of the certified receipt, were unable to testify with any certainty as to what may or may not have been attached to that receipt when received.

Here, the Administrative Law Judge made specific note in her Order that claimant was a more credible witness than respondent's representatives. The Board generally gives some deference to a determination by an administrative law judge as to the credibility of witnesses who testify before that administrative law judge. In doing so, the Board finds that claimant has proven that she suffered accidental injury arising out of and in the course of her employment with respondent and that she provided notice of the accident within a timely manner.

The Board also acknowledges numerous conflicts in the record between the testimony of claimant and the testimonies of the various respondent representatives. The Board is hopeful that these conflicts will be fully explained at the regular hearing in this matter.

As is always the case, the findings from a preliminary hearing are not binding on the parties in a full hearing on the claim, but are subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated May 16, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 2003.

BOARD MEMBER

c: David L. Nelson, Attorney for Claimant
Stephen P. Doherty, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Director